

Notice of Allowability

Application No.

09/886,730

Examiner

Jenna-Leigh Befumo

Applicant(s)

CURRO ET AL.

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the request for continued examination filed June 10, 2004.
2. ☒ The allowed claim(s) is/are 6,7,9-15 and 24-26.
3. ☒ The drawings filed on 02 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>4/02</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel Claims 1 – 5 and 16 – 23.

2. The following is an examiner's statement of reasons for allowance:

3. The Amendment submitted on March 7, 2004, has been entered. Claim 8 has been cancelled. Claims 6, 11, and 14 have been amended and claims. Therefore, the pending claims are 6, 7, 9 – 15, and 24 – 26.

4. The terminal disclaimer filed on May 7, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application No. 09/886,829 has been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the double patenting rejection set forth in the previous Office Action is withdrawn.

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5. The 35 USC 103 rejection based on Srinivasan et al. (5,567,501) is withdrawn since the amended claims 6 and 11 have been now require that the middle elastic layer be made from a non-thermoplastic material and Srinivasan et al. teaches using a thermoplastic which is thermally bonded to the adjacent layers. Further, amended claim 14 requires a middle elastic layer with a melting point which is higher than the outer layer, while Srinivasan et al. teaches using a middle layer with a lower melting point so that the middle layer can melt and bonds to the outer layers to form a composite material.

6. The 35 USC 103 rejection based on Benson et al. (5,628,097) is withdrawn since Benson fails to teach using a non-thermoplastic layer as the middle layer in the composite, as in now recited in claims 6 and 11. Additionally, Benson et al. fails to teach using an elastic layer with a higher melting point and less elastic than the outer layers as is recited in claim 14.

7. The 35 USC 103 rejection based on Palumbo et al. (WO 96/10979) since Palumbo fails to teach a middle elastic layer which is non-thermoplastic, as in now recited in claims 6 and 11. Further, Palumbo et al. fails to teach a middle elastic layer which has a higher meting point that the outer layers as is recited in claim 14.

8. Claims 6, 7, 9 – 15, and 24 – 26 are allowed.

9. The prior art fails to teach or fairly suggest producing a composite material comprising two outer layers bonded together at a plurality of bond sites and an elastic layer between the two outer layers where the elastic layer in non-thermoplastic. The prior art also fails to teach producing a multi-layer composite comprising two outer layers bonded together at a plurality of bond sites and an elastic layer located between the two outer layers where the elastic layer has a higher melting point that the outer layers and is more elastic than the outer layers.

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10. This application is in condition for allowance except for the presence of claims 1 – 5 and 16 – 23 drawn to an invention non-elected without traverse. Accordingly, claims 1 – 5 and 16 – 23 have been cancelled.

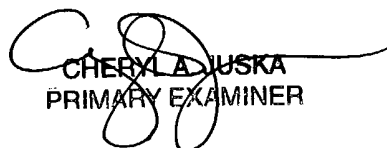
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
August 8, 2004



CHERYL A. JUSKA
PRIMARY EXAMINER